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THE PROCTER & GAMBLE COMPANY
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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/745,702
Filing Date: December 21, 2000
Appellant(s): SALMAN ET AL.

MAILED
APR 29 2005
Group 3700

Jay A. Krebs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 31, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Prior Art of Record*

3,111,796	W. E. Meissner	10-1963
4,869,049	Richards et al.	09-1989
5,662,758	Hamilton et al.	09-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards et al. (4,869,049) in view of Hamilton et al (5,662,758) and W. E. Meissner (3,111,796).

Richards discloses an apparatus comprising: a body formed by an inner core having an inlet opening and an outlet opening and a passageway there between (figures 1, 4 & 5); a casing 1 comprising a surrounding casing wall, a storage space to retain a length of the flexible tubular sheet 2 within the storage space in a layered stack; the tubular sheet is gathered and closed at each end to form a closed packaged article 35 (figure 1); a means 61 comprises a slot for separating the closed packaged article; and the cutting blade 64 (figure 6).

Richards further discloses the article to be packaged is a waste-filled disposable absorbent article (column 2, lines 42-44); a cap 31 and a handle 68.

Richards discloses the claimed invention, but does not expressly disclose that the tubular sheet comprises the adhesive material.

W. E. Meissner discloses, in an invention for closing and sealing a container, that: "for closing and sealing a collapsible container by rupturing a bubble of tacky film-forming material at least within the opening end of the container as that portion of the container is urged into collapsed position" (column 1, lines 31-35). Figure 5 further depicting the closing and sealing of a flexible bag by twisting the bag at the area 53. During this twisting operation, the bubble ruptured and coated the inner wall of the bag with adhesive (column 5, lines 48-55).

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

W. E. Meissner's teaching provides a motivation for the practitioner in the art to find a flexible material to use as a bag in which the inner surface is coated with adhesive, and when pressure is applied such as twisting, the adhesive material ensures the sealing of the closure of the bag.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Richards' tubular sheet by applying the flexible film with adhesive as taught by Hamilton providing an effective closing and

sealing of the waste-filled article in which the flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

Regarding to claim 10, the modified Richards discloses the claimed invention, but does not expressly disclose that the shape of the outlet opening and a portion of the passageway are oval.

It would have been an obvious matter of design choice to make the outlet opening and a portion of the passageway in an oval shape.

Since Applicant's disclosure submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of a circular shape. Thus, the oval shape outlet opening would have been an obvious variation of the present invention.

(10) *Response to Argument*

The appellant's argument regarding the rejection of claims 1 and 6-10 is that there is no motivation to combine the cited references because the cited references teach away from the suggested combination. The examiner disagrees.

Richards' reference teaches a portable apparatus that using the tubing flexible bags for storing and disposal of hygienic material such as soiled baby's nappies, thus bags that provide effective sealing to eliminate the smell is certainly most desirable (column 1, lines 14-24).

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Meissner teaches that an adhesive lining material of a flexible bag (at least partially within the open end of the bags) when closes by twisting (pressed together) provides a leakproof closure (column 1, lines 15-17 and lines 31-35, column 4, lines 50-54 and column 5, lines 48-55).

Hamilton teaches a flexible film having pressure sensitive adhesive protected from inadvertent adherence which does not stick until pressed.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time of the invention was made, to seek out a flexible material such as the one taught by Hamilton to use in the Richard's apparatus. Meissner was relied upon to show that why one would seek to replace Richard's flexible tubing material by using the pressure sensitive flexible bag as taught by Hamilton, because it is desirable to find a flexible material that will stick together when pressed and also preventing the odor to leak out.

The appellant also argues that there is no motivation to combine the references because the primary reference (Richards) teach away from the use of the film of Hamilton, and combine the reference would render the reference unsatisfactory for its intended purpose. The examiner disagrees.

Richards teaches that: the disposal package is closed by manually twisting of the flexible bag (see figures 1-5), a single package can be formed to fill the portable apparatus, different sizes of bag can be made by using the device, and effective sealing is desired because it eliminates the unwanted smell. As discussed in above paragraph, Meissner teaches that using a flexible material with adhesive lining and when twists to

seal provides a bag that is leakproof, therefore seeking out the material as taught by Hamilton is reasonable and logical and is inline with teaching from Richards and Meissner.

The appellant also argues that the combination of cited references fail to teach or suggest a cutting blade is "positioned adjacent the outlet opening of the inner core". The examiner disagrees. Richards also teaches that a cutter can be provided beneath the pack location (column 5, lines 2-4).

The appellant's argument regarding the rejection of claim 10 is that the rejection is improper, because the combination of cited references fail to teach or suggest a "the outlet opening and a portion of the passageway are oval or elliptical". The examiner maintains that it would have been an obvious matter of design choice to modify Richards' device so that the outlet opening and a portion of the passageway are oval or elliptical. Since the appellant has not disclose that having the outlet opening of an oval or elliptical shape solves any stated problem or is for any particular purpose. Furthermore, it appears that the apparatus of the present invention would perform equally well with the outlet opening of a circular shape. Accordingly, the oval shape outlet opening is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Richards.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,


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April 27, 2005

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